In the Supreme Court of the United States

OCTOBER TERM,

NO. 77-1857

NORTH BY NORTHWEST CIVIC ASSOCIATION, INC., PATRICK F. HENRY and JAMES P. POOLE,

Petitioners,

versus

GOODWYN "SHAG" CATES, OTIS L. THORPE and SAM CALLAWAY, as the Joint City-County Board of Tax Assessors, WILLIAM LEE ROBERTS, Fulton County Tax Commissioner and NICK P. CHILIVIS, State Revenue Commissioner,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

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AUTHORITIES CITED

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

Petitioners, North by Northwest Civic Association, Inc. (hereinafter "Civic Association"), Patrick F. Henry (hereinafter "Taxpayer"), respectfully pray that a writ of certiorari issue to review the judgment of the Supreme Court of Georgia entered in this case on February 22, 1978.

OPINIONS BELOW

The opinion of the Supreme Court of Georgia (Appendix pp. A-2-A-7) is reported at 241 Ga. 39. The Southeastern citation is not yet available. The Order entered on March 28, 1978, denying the petitioners' Motion for Rehear-

ing is at Appendix p. A-1.

JURISDICTION

The opinion and judgment of the Supreme Court of Georgia were issued on February 22, 1978. The Order of the Supreme Court of Georgia denying the Petitioners' Motion for Rehearing was issued March 28, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(3).

QUESTIONS PRESENTED

I. Where some parcels of land in a tax district are over-assessed and other parcels of land in a tax district are under-assessed, do taxpayers have the right to a declaratory judgment to determine whether or not the methods employed by tax assessors are authorized by law and whether or not, if authorized, said methods deny all taxpayers rights to due process?

II. Where the State Revenue Commissioner make adjustments in the local tax digest of one tax district and does not apply the same standards to other tax districts in the state, does an individual taxpayer have standing to complain that the acts of the State Revenue Commissioner are arbitrary, unreasonable and in violation of due process of the Georgia Constitution as well as the Fourteenth Amendment to the Constitution of the United States?

III. Where a local statute provides that a taxpayer must make his complaint in writing within ten

days after notice of an increase in property tax assessment, and further provides that the tax assessors must also act within ten days (to appoint an arbitrator) after the taxpayer make his objections, if the taxpayer is required by law to act within ten days, why should not the tax assessor also be required to act within the ten days specified by the statute for him to act?

IV. Where a local statute provides that no suit may be brought to contest any matter affecting real estate taxes until the plaintiff taxpayer has paid as taxes for the year in which the suit is brought an amount equal to the actual taxes paid the previous year on said property, even before the date upon which taxes are due and payable; and where said taxpayer offers in his complaint to pay his taxes on the tax due date in the future, does not the local statute deny said taxpayer equal treatment under the law in violation to his rights to due process since all other taxpayers are not required to pay the taxes until the tax due date?

STATUTES INVOLVED

This case involved Georgia Code Section 92-6413, which reads as follows:

> *"Payment of ad valorem property taxes condition precedent to superior court jurisdiction* in property tax litigation -- Notwithstanding any other provision of law to the contrary, before the superior

court shall have jurisdiction to entertain any civil action, appeal, or affidavit of illegality filed by any aggrieved taxpayer respecting liability for ad valorem property taxes, valuation of property for ad valorem taxes, or uniformity of assessments for ad valorem property taxes, such taxpayer shall pay the amount of ad valorem property taxes assessed against the property at issue for the last year for which taxes were finally determined to be due on such property."

This case also involves Georgia Laws of 1974, pp. 3607-3609, Section 1 of which provides the following about arbitration:

"If a taxpayer is dissatisfied with the action of the Joint Board of Tax Assessors, he may, within 10 days from the giving of said notice of assessment in case of residents, and within 20 days in case of nonresidents of the county, give notice in writing to the Board that he demands an arbitration, giving at the same time the name of his arbitrator; the Board shall name its arbitrator within ten (10) days after receiving such note from the taxpayer thereafter, and these two shall select a third, . ."

STATEMENT OF THE CASE

The opinion of the Supreme Court of Georgia fairly states the pertinent facts in this case; but, briefly, they are as follows:

1.

The tax assessors for the City of Atlanta and Fulton County raised the assessment of the plaintiff taxpayers. As provided by Georgia law, the taxpayers objected to the increased assessments of taxes on their homes and each of them appointed an arbitrator, all within the ten day period allowed to any taxpayer. The Georgia law further provides that when a taxpayer objects to an assessment and appoints an arbitrator, the tax assessor must appoint his arbitrator within ten days after receipt of notice of the action of the taxpayer. In the instant case, the tax assessors did not appoint their arbitrators within the ten day period allowed by Georgia law.

2.

The taxpayers then alleged that the 188,000 land parcels in Fulton County and City of Atlanta are not returned at their fair market value as required by law; that many of them are over-assessed and many of them are under-assessed as a result of the method of tax assessment used by the tax assessors, resulting in non-uniform assessments throughout the district. The taxpayers demanded that the tax assessors change their method of assessment.

3.

The complaint further alleged that the State Revenue Commissioner had increased the tax digest of the tax district in which the taxpayers are located by 12% in 1973 and by 9% in 1976. State Revenue Commissioner made no investigation into the value of any of the land in said tax district

and the increases were arbitrary and unreasonable. Furthermore, State Revenue Commissioner did not apply the same standards in approving or disapproving the tax digest of all tax districts in the State of Georgia and said actions constitute denial of due process.

4.

The taxpayers offered in the last paragraph of the complaint to pay their 1977 taxes when they became due in 1977, based on the tax assessment of their individual properties for the year 1976.

5.

Tax assessors filed a defense that the trial court did not have jurisdiction of the complaint because the taxpayers had not paid, as their taxes for 1977, an amount equal to the taxes which they had paid in 1976 as required by Georgia Code Section 92-6413.

6.

The tax assessors and the State Revenue Commissioner further defended on the grounds that individual taxpayers had no standing to sue the State Revenue Commissioner with regards to the increase in assessments ordered by the State Revenue Commissioner in 1973 and 1976 which raised all assessments in the tax district, including those of the complaining taxpayers in this tax suit.

7.

The holdings of the trial court and of the Georgia Supreme

Court were all adverse to the plaintiff taxpayers.

REASONS FOR GRANTING WRIT OF CERTIORARI

The net effect of the holding of the Georgia Supreme Court is:

1.

That an individual taxpayer has no way to contest in Court the non-uniform method of assessment employed by the tax assessors of the City of Atlanta and Fulton County.

2.

That an individual taxpayer has no standing in court to complain of the non-uniform and arbitrary increase of tax assessments made by the State Revenue Commissioner and, to the contrary, that only the tax assessors of the county and city government can complain of possible illegal action by the State Revenue Commissioner.

3.

That even though the Georgia law provides that the taxpayer must protest a tax assessment within ten days and that the tax assessor must appoint his arbitrator within the following ten days, the taxpayer must act within ten days or lose his rights but the time limitation on the tax assessor is strictly directory and the tax assessors are not bound to act within ten days.

4.

That a taxpayer must pay his taxes for the year in which

the lawsuit is brought in order for the trial court to have jurisdiction even if the taxes are not due and even if the tax rate has not been set by the governmental authorities and even if the tax digest has not been approved by the proper governmental authorities and even though all other taxpayers do not have to pay their taxes until the date set by law which falls after the date of filing of the suit.

If the above four holdings of the Supreme Court of Georgia do not, by themselves and without further explanation or further argument, inspire this Court to grant a writ of certiorari, then further argument is probably useless. The arbitrary and unreasonable acts of the tax assessors and the State Revenue Commissioner are such flagrant violations of the principle of equal and fair treatment that the only possible logical conclusion is that the plaintiff taxpayers were denied equal treatment under the law in violation of the Fourteenth Amendment to the United States Constitution. The holding that the taxpayer must act to protect his rights within ten days but that the tax assessor may act with impunity after the time limit of ten days provided in the same statute is manifestly unfair and in violation of the rights of the taxpayers to fair and equal treatment under the law. It is almost unbelieveable that a court of law in the United States would hold that a government official (tax assessor) is not bound to the same strict adherence to the law as is required of a citizen (tax payer). That expression of philosophy by the lower court should impel this Court to issue a writ of certiorari so that this Court can proclaim that citizens of this country are due equal treatment afforded to govern-

ment officials of this country. Courts are the only protection that the citizens have against the illegal and arbitrary acts of their own governments. The citizens may rebel or they may vote public officials out of office, but the means provided by the United States Constitution is for resort by citizens to the courts for redress of grievances. That is why we are here. That is why this Court should grant a writ of certiorari to correct the errors of the Supreme Court of Georgia. The issues in this case go to the very foundation of citizens' rights under the Constitution.

We submit that this Court needs no further authority to justify granting the requested writ of certiorari. However, this Court in *Delmar Jockey Club v. Missouri*, 210 U.S. 324, 335 (1908), referred to a state court decision which was assertedly "so plainly arbitrary and contrary to law as to be an act of mere spoliation." This Court in *American Railway Express Co. v. Kentucky*, 273 U.S. 269, 273 (1927), stated,

> "We cannot interfere unless the judgment amounts to mere arbitrary or capiricious exercise of power or is in clear conflict with those fundamental 'principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights.' " (Emphasis added.)

Where a decision of the highest court of a state is plainly arbitrary or manifestly wrong, constitutes gross and obvious error, or ignores "plain rights," such decision can be the basis for a claim of taking without due process. See *Atlantic Coast Line Railroad Co. v. Phillips*, 332 U.S. 168 (1974); *Roberts v. New York*, 295 U.S. 264, 277-278 (1935).

We urge the Court to grant this writ of certiorari because of the vital questions raised as to the rights of citizens and as to the principles involved in this case regarding taxation and the opportunity of taxpayers to be heard. A petition for a writ of certiorari should only set out the reasons for granting writ; we hope this Court will afford us the opportunity to argue by brief and orally this case in detail.

Respectfully submitted,

Moreton Rolleston, Jr.
Attorney for Petitioners

2604 First National Bank Tower
Atlanta, Georgia 30303
404/658-1228

CERTIFICATE OF SERVICE

This is to certify that I have this day served copies of the foregoing "Petition for a Writ of Certiorari to the Supreme Court of Georgia" upon counsel for all parties by placing copies in the United States Mail, postage prepaid, properly addressed, as follows:

Charles M. Lokey
Attorney at Law
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Atlanta, Georgia 30303

Guy Parker
Attorney at Law
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Arthur K. Bolton
Attorney General
132 State Judicial Building
Atlanta, Georgia 30334

This 23rd day of June, 1978.

Moreton Rolleston, Jr.

APPENDIX I

Certified copy of Denial of Motion for Rehearing

SUPREME COURT OF GEORGIA

Atlanta, March 28, 1978

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

North by Northwest Civic Association, Inc., et al. v. Goodwyn "Shag" Cates et al.

Upon consideration of the motion for rehearing filed in this case, it is ordered that it be hereby denied. All the Justices concur.

SUPREME COURT OF THE STATE OF GEORGIA,
Clerk's Office, Atlanta, June 22, 1978

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

s/ Joline B. Williams, Clerk.

(SEAL)

APPENDIX II

Xeroxed Copy of Order of Judgment of Supreme Court

In the Supreme Court of Georgia. 582

Decided: Feb. 22, 1978

32958. NORTH BY NORTHWEST CIVIC ASSOCIATION, INC. et al. v. CATES et al.

MARSHALL, Justice.

The appellants, an association of property owners in northwest Atlanta and an arbitrator appointed by the association, brought this class action complaining among other things that the Joint City of Atlanta-Fulton County Board of Tax Assessors had notified the property owners of an increase in the assessments on their property for purposes of the 1977 ad valorem tax levy.

The appellants alleged that they, individually and as a class, had given written notice to the board within 10 days from the date they had been given the notices of assessment demanding arbitration and naming their arbitrator, as required by Ga. L. 1974, p. 3607, § 1. The appellants alleged that the board had failed to name its arbitrator within 10 days after receiving the appellants' arbitration demand, which the previous Act also requires. The appellants prayed that arbitration proceedings concerning the appellants' property be enjoined. They also sought a declaratory judgment that the appointment of an arbitrator by the board would be illegal and, therefore, that the present valuation of appellants' property in their 1977 tax returns is the sole, legal basis for

taxation.

Alleging that the valuation method presently used by the county tax assessor results in nonuniform assessments, so that some parcels of land in the tax district are overassessed and other parcels of land in the tax district are underassessed, the appellants prayed that the trial court conduct a class arbitration on this question, citing as authority for such a procedure certain statements by this court in *Boynton v. Carswell*, 238 Ga. 417 (233 SE2d 185) (1977), since repudiated in *Callaway v. Carswell*, Ga. (1977) (case Nos. 32753, 32754). The appellants alleged here that their grievances are similar to those of the taxpayers in *Boynton v. Carswell*, and, on this basis, they argue that under *Boynton* a class arbitration should be ordered.[1]

The appellants also sought a declaratory judgment that the State Revenue Commissioner's increases in the local tax digest for the years 1973 and 1976 should be decreased because these increases failed to differentiate between different parcels of land within the tax district and also because they discriminate against this tax district vis-a-fis other tax districts in the state. For these reasons, the appellants argued that the revenue commissioner's increases in the local tax digest for these years were arbitrary, unreasonable, and a violation of due process.

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1. It is not clear which of two positions the appellants are taking. They seem to be arguing, on the one hand, that their properties are overassessed and other properties in the tax district are underassessed. On the other hand, they seem to be arguing, not that their properties are overassessed, but simply that the other properties are underassessed; this nonuniformity in assessments among different properties in the tax district would be brought about by the tax assessors reassessing property in a piecemeal fashion.

Boynton v. Carswell was decided under the premise that the taxpayers there were making the former argument. *Callaway v. Carswell* overruled *Boynton* because of the realization that it was the latter argument that was being made.

The trial court granted the local tax assessor's and tax commissioner's motions to dismiss the complaint on two grounds: (1) the appellants' failure to comply with Code Ann. § 92-6413 (Ga. L. 1976, p. 1154) [2]; (2) the failure of the appellants' complaint to allege facts upon which class arbitration could be ordered, and, therefore, to state a claim upon which relief could be granted. The court denied the appellants' request to declare void the appointment of an arbitrator by the board. The court granted the appellee State Revenue Commissioner's motion to dismiss on grounds of mootness and also on the ground that the relief requested against the state could not be granted to the individual taxpayers, citing *Chilivis v. Kell*, 236 Ga. 226 (5) (223 SE2d 117) (1976) and cases cited therein. This appeal follows. *Held:*

1. As to the trial court's dismissal of the appellants' complaint because of their failure to comply with the requirements of Code Ann. § 92-6413, the appellants argue that their city and county ad valorem property taxes had not come due on the date this complaint was filed and that an offer in the complaint to pay their city and county ad valorem property taxes as they came due based on the 1976 tax assessment satisfied the jurisdictional requirement imposed by Code Ann. § 92-6413. We do not agree.

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2. Code Ann. § 92-6413 provides: *"Payment of ad valorem property taxes condition precedent to superior court jurisdiction in property tax litigation* - Notwithstanding any other provision of law to the contrary, before the superior court shall have jurisdiction to entertain any civil action, appeal, or affidavit of illegality filed by any aggrieved taxpayer respecting liability for ad valorem property taxes, taxability of property for ad valorem property taxes, valuation of property for ad valorem taxes,or uniformity of assessments for ad valorem property taxes, such taxpayer shall pay the amount of ad valorem property for which taxes were finally determined to be due on such property."

The appellants' offer to pay their 1977 county and municipal ad valorem taxes based on the 1976 assessments when the 1977 taxes became due would satisfy Ga. L. 1974, pp. 2489, 2490, §2, which applies only to the larger counties and municipalities in the state.

However, Code Ann. § 92-6413 imposes as a jurisdictional prerequisite to any superior court in this state entertaining any of the ad valorem property tax disputes enumerated in that Code section, that the taxpayer "pay the amount of ad valorem property taxes assessed against the property at issue for the last year for which taxes were finally determined to be due on such property." Since the taxpayers in this case are bringing suit in 1977 to contest the uniformity of assessment and property valuation for their 1977 ad valorem property taxes, Code Ann. § 92-6413 requires them, as a condition precedent to their bringing this suit, to pay the amount of ad valorem property taxes assessed against the property at issue for 1976, the last year for which such taxes were finally determined to be due.[3]

Section 92-6413 is part of a larger statutory scheme, Code Ann. § 92-6413 through 92-6416 (Ga. L. 1976, pp. 1154, 1155), the other provisions of which convince us that this is the construction of §92-6413 that the General Assembly intended. Specifically, § 92-6413 provides that if the total millage rate has not been determined for the current year, the taxes paid under the provisions of this law shall be distributed to the applicable taxing districts on the basis of the

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3.No. question concerning the constitutionality of this tax collection procedure has been raised in this case. However, we do note *Blackmon v. Ewing*, 231 Ga. 239 (2) (201 SE2d 138) (1973), which holds that the superior court, under its equitable powers, is authorized to direct the temporary collection of ad valorem taxes on some rational basis.

millage rate established for the immediately preceding year. This provision indicates that the General Assembly anticipated that payments of ad valorem taxes pursuant to the requirement of Code Ann.§ 92-6413 would be made before the millage rate for that year had been determined, and, therefore, before ad valorem taxes for that year were due and payable.

Register v. Langdale, 226 Ga. 82 (172 SE2d 620) (1970), which holds that in ad valorem tax contest proceedings the taxpayer need only tender the amount of taxes admitted to be due as they become due, has been superseded by Code Ann. § 92-6413. The appellants' reliance upon Register is, therefore, misplaced.

2. The trial court did not err in refusing to declare the Joint City-County Board of Tax Assessors' appointment of an arbitrator illegal. See *Callaway v. Carswell*, supra.

Assuming that the board failed to name its arbitrator within 10 days after receiving the taxpayers' demand to arbitrate, which the appellees dispute, this would not justify the court in declaring illegal the board's subsequent appointment of an arbitrator. We interpret as directory the requirement in Ga. L. 1974, p. 3607, that the board name its arbitrator within 10 days after receiving the taxpayers' written notice demanding an arbitration.

"[T]his court has held that language contained in a statute which, given its ordinary meaning, commands the doing of a thing within a certain time, when not accompanied by any negative words restraining the doing of the thing afterward, will generally be construed as merely directory and not as a

limitation of authority, and this is especially so where no injury appeared to have resulted from the fact that the thing was done after the time limited by the plain wording of the Act. [Cits.] . . . [A] statutory provision is generally regarded as directory where a failure of performance will result in no injury or prejudice to the substantial rights of interested persons, and as mandatory where such injury or prejudice will result." *Barton v. Atkinson*, 228 Ga. 733, 739 (187 SE2d 835) (1972).

3. Under *Ogletree v. Woodward*, 150 Ga. 691 (105 SE 243) (1920), *Griggs v. Greene*, 230 Ga. 257 (4) (197 SE2d 116) (1973), and *Chilivis v. Kell*, supra, any objection to adjustment in the local tax digest by the State Revenue Commissioner must be made by the county tax officials and not by the individual taxpayer. Accordingly, we hold that the trial court did not err in dismissing the appellants' complaint against the State Revenue Commissioner for lack of standing.

4. There were no requests at trial that the board of tax assessors be ordered to appoint either a class artibtrator or arbitrators to arbitrate with the taxpayers on an individual basis. Since statutory arbitration proceedings between these taxpayers as a class and the board of tax assessors has not yet begun and forms no part of the relief prayed for, class arbitration is now barred by *Callaway v. Carswell*, supra. Our decision does not affect arbitrations between individual taxpayers and the board, which may proceed at their own pace.

Judgment affirmed. All the Justices concur.

APPENDIX III

Xeroxed copy of Motion for Re-Hearing

IN THE
SUPREME COURT OF STATE OF GEORGIA

NORTH BY NORTHWEST CIVIC ASSOCIATION, INC., et al.,
Appellants

Vs. CASE NO. 32958

GOODWYN "SHAG" CATES, et al.,
Appellees

MOTION FOR RE-HEARING

Now come the Appellants, North by Northwest Civic Association, Inc., Patrick F. Henry and James P. Poole, and file this Motion for Re-Hearing within ten days of the Judgment of this Court dated February 2, 1978. In support of their Motion, Appellants show as follows:

1.

There are two statements of factual issues in the opinion which are incorrect. First, in the second line of the opinion it was stated that "an arbitrator appointed by the association"; paragraph three of the original petition alleges that "Patrick F. Henry also brings this action as an arbitrator who has been appointed by one of the taxpayers of the class". Second, in the fourth line from the end of the opinion in

paragraph four, the following statement appears "Since statutory arbitration proceedings between these taxpayers as a class and the board of tax assessors has not yet begun and forms no part of the relief prayed for, . .". As a matter of fact, paragraph seven of the complaint alleges that the Tax Assessors have appointed arbitrators after the expiration of ten days and that a third arbitrator has been appointed by the Judge of the Superior Court of Fulton County. Said allegations were incorporated in Count II, and Count II prays as follows: "That this court conduct a class arbitration or order a class arbitration involving the properties of all the Taxpayers."

2.

This Court held in its opinion on February 22, 1978 that the trial court did not have jurisdiction of the complaint because the plaintiffs did not pay taxes for the year 1977 based on the 1976 millage rate. The Court noted that the appellants had offered to pay their 1977 taxes based on the 1976 assessments when the 1977 taxes became due but held that the appellants had to pay the taxes for 1977 before they became due and payable. This, we submit is a harsh, unreasonable and arbitrary rule that places additional financial burden on taxpayers who wish to contest taxes imposed upon them by their government which is not required or imposed upon other taxpayers and is in violation of the appellants' right to be treated equally under the law and therefore is in violation of the Constitution of Georgia. We note that the Court held that *Register v. Langdale* has been superseded by Code Ann. § 92-6413; if so, we submit that the code section is void as being in violation of the State Constitution.

3.

The Court held in said opinion that the provision, which required the Tax Assessors to appoint an arbitrator within ten days after receiving the taxpayers' demand to arbitrate, was simply directory and not legally binding on the Tax Assessors. This Court cited*Barton v. Atkinson*, whose opinion defined "directory" as especially applying where no inquiry appeared. This Court must have overlooked the fact that every one of the 140 taxpayers of the class will sustain substantial loss by having to pay additional taxes because this Court has held that the Tax Assessors did not act illegally in appointing arbitrators.

4.

We further, respectfully, challenge the wisdom of *Barton vs. Atkinson* which in effect says that a time limitation is binding on a taxpayer but is not binding on a tax assessor and we submit this constitutes unequal, unreasonable and arbitrary treatment of a taxpayer and citizen in violation of the State Constitution.

5.

The Court held in said opinion that no individual taxpayer and only the County Tax Officials could object to adjustments in the local tax digest made by the State Revenue Commissioner. The cases cited by the Court were cited in the lower court and in briefs by the Appellees. We submit that the Court must have overlooked the legal principle that any individual, any citizen, any taxpayer has the right to challenge an illegal act of any government official which violates the rights of the challenger and that no court and no

Lesiglature can take that right from the challenger. We submit, therefore, that such a ruling is contrary to the State Constitution.

6.

If the case *Chilivis v. Kell* is allowed to stand, we ask what is the limitation upon the power of the Legislature to exempt government officials in all branches of the state government from challenge from its own citizens. Could not the extension of this theory to other government officials eventually lead to the destruction of the right of a citizen to question the actions of government officials in court and to seek redress at the hands of the judiciary from the autocratic and unbridled use of power by government officials who thought they could not be challenged?

7.

In paragraph 2 of Count III, appellants alleged that most of the 188,000 land parcels in Fulton Cointy, some of which lie in the City of Atlanta, were either over-assessed or under-assessed, contrary to the law. Appellants alleged that they had complained to the Tax Assessors of the method which resulted in the non-uniform assessment. The net result of the opinion of this Court dated February 22, 1978 is that the taxpayer is told that he has no way to contest the system of Assessments in Fulton County which result in the non-uniform assessments throughout the tax district. The appellants are entitled to have a way to challenge this tax system because the appellants as well as all other taxpayers are financially affected not only by their own tax assessment, but also by the tax assessment on all other parcels of land in Fulton County. We submit that, if the assessments are not uniform, each taxpayer bears an undue financial burden in the support of his government which is contrary to the Constitution of the State of Georgia.

s/ Moreton Rolleston, Jr.
Attorney for Appellant

CERTIFICATE OF COUNSEL

This is to certify that Moreton Rolleston, Jr., attorney for the appellants, upon careful examination of the opinion of the Court, believes that the facts and legal theories were either overlooked or misconstrued and that the opinion of the Court should be amended to remand the case to the lower court for a trial of the issues.

s/ Moreton Rolleston, Jr.
Moreton Rolleston, Jr.

CERTIFICATE OF SERVICE

I, Moreton Rolleston, Jr., attorney for Mrs. Betty Pope, Appellant, do hereby certify that I have served all of the parties of record with the within and foregoing Motion for Rehearing by mailing a copy of same, by certified mail, to all counsel of record, at their correct mailing addresses, with sufficient postage affixed thereto as follows:

Mr. Charles Lokey
2614 First National Bank Tower
Atlanta, Georgia 30303

Mr. Guy Parker
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229 Peachtree Street
Atlanta, Georgia 30303

Mr. Nick P. Chilivis
State Revenue Commissioner
State Capitol
Atlanta, Georgia

This 6th day of March, 1978.

s/ Moreton Rolleston, Jr.
Moreton Rolleston, Jr.